

The Catholic Lawyer

Volume 38
Number 3 *Volume 38, Number 3*

Article 4

October 2017

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James W. Perkins

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Recommended Citation

James W. Perkins (1998) "Virtues And The Lawyer," *The Catholic Lawyer*. Vol. 38 : No. 3 , Article 4.
Available at: <https://scholarship.law.stjohns.edu/tcl/vol38/iss3/4>

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VIRTUES AND THE LAWYER

JAMES W. PERKINS*

I. INTRODUCTION

Can there be a virtuous lawyer? Our non-lawyer friends gleefully answer that *virtuous lawyer* is an oxymoron.¹

Dissatisfaction with American lawyers has spread both within and without the profession. Distinguished observers from within the profession maintain that the "wise-counselor" or "lawyer-statesman" ideal to which lawyers formerly aspired has been dislodged and that the moral quality of law as practiced has deteriorated.²

Among the causes cited for our moral decline are increased competition among lawyers for legal work,³ increased firm size,

* Of counsel, Palmer & Dodge LLP, Boston, Massachusetts. The author has served as Chairman of the Section of Local Government Law of the American Bar Association, President of the National Association of Bond Lawyers and Managing Partner of Palmer & Dodge.

After more than four decades as a practicing lawyer, the author enrolled in the Harvard Divinity School and received the degree of Master of Theological Studies in June 1996. Through cross-registration at the Weston Jesuit School of Theology, the author studied with Father James Keenan, whose restatement of the Four Cardinal Virtues plays a prominent part in this essay. The author is especially indebted to him for his teaching and for his illumination of the role of the virtues in our lives.

¹ Daniel Coquillette, former Dean of Boston College Law School, relates a pertinent reflection by W. C. Fields: "Fields once paused by a tombstone that read, 'Here lies a lawyer and an honest man' and remarked, 'How did they get two bodies under there?'" Daniel R. Coquillette, *Professionalism: The Deep Theory*, 72 N.C. L. REV. 1271, 1272 (1994).

² See *id.* at 1272-73 (observing that the legal profession is in crisis because those in the profession have lost sight of the ultimate reasons for obeying rules).

³ See American Bar Association, Commission on Professionalism, "... *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism*, 112 F.R.D. 243, 260 (1986) [hereinafter ABA (1986)] (discussing how economic pressures have lead to unprofessional behavior); Boston Bar Association, Committee on Professionalism, *Professionalism and the Legal Profession* 7 (1992) [hereinafter BBA]; MARY ANN GLENDON, *A NATION UNDER LAWYERS* 25 (1994) ("By the mid-1980s, no firm could take the loyalty of its clients for granted. Business-getting lawyers were once again at a premium....").

early specialization,⁴ increased mobility of both lawyers and clients,⁵ high overhead costs,⁶ invalidation of minimum fee schedules, rules against lawyer advertising and solicitation of clients,⁷ unrelenting pressure to record more billable hours,⁸ and decreased opportunities for co-deliberation with clients as to what would be best (and not merely "legal") for them to do.⁹ To these I would add greater opportunities for large profits and greater risks of financial failure. All these causes lead to, or express, a preoccupation with financial return rather than with promoting humanity or bettering the quality of one's life.¹⁰

Our critics suggest that the former "wise counselor" or "lawyer-statesman" ideal has been replaced by new ideals of the lawyer who sacrifices his personal life for his career¹¹ or of the

⁴ See ANTHONY T. KRONMAN, *THE LOST LAWYER* 291 (1993) (finding that specialization has led to a shift in the relationship between law firms and their clients, "and has created an environment in which the lawyer-statesman ideal is less likely to survive"); GLENDON, *supra* note 3, at 29, 37.

⁵ See KRONMAN, *supra* note 4, at 278 (noting that "just as there has been a loosening of the external ties that bind the large firm to its clients, so too has there been a similar loosening of the internal bonds that link the members of each firm to one another"); ABA (1986), *supra* note 3, at 260 (finding that "[c]orporations are staffing internally to do work which they used to send to outside firms," and companies are replacing long-time counsel with "firms that promise to do the same work for less money"); GLENDON, *supra* note 3, at 25 (observing that in the 1980's "[t]he era when firms could assume that the steady stream of business from a stable roster of clients would flow on forever was drawing to a close").

⁶ See ABA (1986), *supra* note 3, at 260 (illustrating by example the enormous pressure felt by many lawyers today to generate fees in order to cover overhead and still earn an income).

⁷ See ABA (1986), *supra* note 3, at 255-57 (summarizing Supreme Court cases on regulation of lawyers); BBA, *supra* note 3, at 7; Dick Dahl, *The Trouble with Lawyers*, BOSTON GLOBE, Apr. 14, 1996, at 28 (Magazine). Although invalidating these rules played a part in commercializing the practice of law, invalidation was in the public interest. It enabled the public to shop more effectively for legal services on the basis of both quality and cost. See SOL M. LINOWITZ, *THE BETRAYED PROFESSION* 147-48 (1994).

⁸ See ABA (1986), *supra* note 3, at 260 (opining that attorneys are put under pressure to bill more hours due to the high overhead costs of law firms); GLENDON, *supra* note 3, at 29 (discussing how billing "[b]y the 1980's ... had evolved from a sensible tool of office management to a frenetic way of life"); KRONMAN, *supra* note 4, at 302 (noting that there is now an "increased emphasis on hours billed as a criterion for measuring associate performance" and this has lead to "associates ... themselves equat[ing] success ...with hours billed"); Dahl, *supra* note 7, at 27.

⁹ See GLENDON, *supra* note 3, at 34 (stating that this has arisen due to increased specialization); KRONMAN, *supra* note 4, at 286-91.

¹⁰ See KRONMAN, *supra* note 4, at 296, 299; Dahl, *supra* note 7, at 27.

¹¹ KRONMAN, *supra* note 4, at 307 (talking of "the lawyer who cares about nothing but work and is prepared to sacrifice all of his or her personal energies to it"); cf.

"lawyer-businessman" who brings major legal business into the firm.¹² An American Bar Association report on professionalism asks, "Has our profession abandoned principle for profit, professionalism for commercialism?"¹³ One federal judge, responding to the business emphasis of law firms, put it this way:

For [the associate] to come to any conclusion other than the fact that the dollar is what the practice of law is all about would require some sort of superhuman mental gyration on his part, because all of the stimuli to which he's being exposed indicate the exact reverse. The buck is what it's about.¹⁴

The critics are generally pessimistic in outlook and short on suggestions for improvement. One critic, Dean Kronman of Yale, in *The Lost Lawyer*, suggests that individuals "may find a way to honor [the lawyer-statesman ideal] ... by searching out the cracks and crevices in which a person devoted to [it] may still make a living in the law."¹⁵

My purpose here is to suggest a hopeful path: To move legal ethics away from its nearly exclusive emphasis on rules to an approach based more on virtues and character similar to the "lawyer-statesman" or "wise counselor" ideal. This entails focusing on the kind of person the lawyer is becoming through his training and actions. What is needed is an explicit rearticulation of virtue-oriented ethics as applied to the practice of law today.

II. CHARACTER AND RULES

The two most significant camps of ethical theorists are *deontologists* (after the Greek word for "ought")¹⁶ and *ontologists* (after the Greek word for "be"). Deontologists emphasize rules. Ontologists emphasize character—the sort of persons we are, or

John Paul II, *Laborem Exercens* §6 (1981) ("However true it may be that man is destined for work and called to it, in the first place work is 'for man' and not man 'for work.'"), reprinted in CLAUDIA CARLEN IHM, *THE PAPAL ENCYCLICALS 1958 - 1981*, at 299, 304 (1981).

¹² See Gerald Gillerman, *The American Lawyer: Voices from Another Quarter*, 29 BOSTON B. J. 35, 38-39 (1985).

¹³ ABA (1986), *supra* note 3, at 251.

¹⁴ Judge John F. Grady, *Commentary*, THE LAWYER'S PROFESSIONAL INDEPENDENCE: AN IDEAL REVISITED 30 (John B. Davidson ed., 1985).

¹⁵ KRONMAN, *supra* note 4, at 7.

¹⁶ See James F. Keenan, S.J., *Proposing Cardinal Virtues*, 56 THEOLOGICAL STUDIES 709 (1995).

are becoming.¹⁷ A deontologist asks, "What is the law [governing] my life?" An ontologist asks, "What is my goal, [my] ideal?"¹⁸

Rules tend to operate negatively. It is relatively easy to make rules about what *not* to do. For example, one should not steal from a beggar's cup when he advances it for a donation. But a rule as to what *should* be done is more difficult to articulate. Should we give the beggar money? Will he use it wisely? Should we instead give to the United Way, or to a shelter? If we give, how much should we give? The best answer is too dependent on circumstances to be encapsulated in a rule.

Since rules must be limited to what can be more-or-less succinctly stated, they tend to be minimalistic. They understate the significance of the call to a moral life. Rules do not teach us how to become the kind of person we ought to be, nor do rules bestow on us the honesty and insight needed in order to determine what ought to be done. Rules do not tug at our emotions to influence us to be more fair and helpful to others, or to do what is right for ourselves. As distinguished senior lawyer Sol Linowitz once put it, "Rules' may not be the answer: Attitudes will count for

¹⁷ See *id.* at 710.

¹⁸ H. RICHARD NIEBUHR, *THE RESPONSIBLE SELF* 60 (1963). Many deontologists believe that the rules can be derived from primal self-evident principles, such as respect for life and autonomy. However, virtue ethicists tend to believe that "virtues can provide the standards of morally right conduct [P]rinciples and rules are derived from virtues." Keenan, *supra* note 16, at 711; see also THOMAS L. SHAFFER WITH MARY M. SHAFFER, *AMERICAN LAWYERS AND THEIR COMMUNITIES* 14 (1991) (noting that "virtue and good character are goals in themselves"). There are some ethicists with a foot in each camp who claim that virtues "do not supply specific directives for determining right or wrong conduct [but] merely enable us to perform what the principles command." Keenan, *supra* note 16, at 711; see ALASDAIR MACINTYRE, *AFTER VIRTUE* 119 (2d ed. 1984) ("Qualities of character...generally come to be prized only because they will lead us to follow the right set of rules."). See generally WILLIAM K. FRANKENA, *ETHICS* 65 (2d ed. 1973) (proposing a dual morality, "for every principle there will be a morally good trait,...consisting of a disposition or tendency to act according to it; and for every morally good trait there will be a principle defining the kind of action in which it is to express itself"). This article presupposes (with the deontologists) that some rules can be drawn from self-evident principles. For example, the general rule that we should not kill can be drawn from the obvious principle of respect for life. But it can be drawn from the virtues as well since a just person would not kill another person without compelling justification. Virtues do what principles cannot do; they motivate. Moreover, as will be seen, the virtue of prudence provides the only standards that can exist for choosing among conflicting values that cannot be measured against one another, whether those values are found in "principles" or in "virtues."

more."¹⁹

Beyond compliance with rules, there is what ethicists call supererogatory action.²⁰ Supererogatory action is voluntary action that goes beyond what the rules require in order to promote good.²¹ It is both socially useful and life-enrichening to have a category of meritorious actions that goes beyond what is required. Because rules concern that which is required only, they do not promote supererogatory action. Character does.

The honesty and skill to discern what is right, and the desire and goodness to do what is right, lie not in rules, but in the virtues. The virtues are acquired character traits. For instance, by regularly doing just acts, one becomes a just person.²² Therefore, justice—an attraction to fairness and a disposition to act justly—is a key virtue. So, also, is prudence. Prudence is a skill and an affinity for deliberating as to what is right, and respecting tradition and the opinions of others while, at the same time, thinking for oneself without self-deception.

Rules are externally imposed and limit our freedom. Virtues arise within us and express our freedom. This reinforces their motivating power.

III. THE FORMER LAWYER VIRTUES

In *A Nation Under Lawyers*, Professor Mary Ann Glendon of Harvard Law School has described the virtues of the "wise counselor" as ideals to which "lawyers were so widely oriented ... in the earlier part of this century."²³ The wise counselor had a broad view of faithful client representation and functioned as the conscience to his or her clients.²⁴ The wise counselor served his or her clients best by dissuading them from litigation, or by discussing options, rather than by blindly following the individual

¹⁹ LINOWITZ, *supra* note 7, at 36.

²⁰ See Tom L. Beauchamp, *What's So Special About the Virtues?* in VIRTUE AND MEDICINE 307, 311-12 (Earl E. Shelp ed., 1985).

²¹ See WESTMINSTER DICTIONARY OF CHRISTIAN ETHICS, *Works of Supererogation*, John MacQuarrie 612 (James F. Childress & John MacQuarrie eds., 1986).

²² See THOMAS AQUINAS, SUMMA THEOLOGICA pt. II-II, 58, art.3 (Fathers of the English Dominican Province trans., 1948) [hereinafter AQUINAS, cited by part and article number] (explaining that justice is a virtue and that "justice regulates human operations").

²³ GLENDON, *supra* note 3, at 35.

²⁴ See *id.* at 35, 75 (stating that such an ideal of the lawyer's role often overrode personal and economic considerations).

clients' wishes.²⁵ These counselors recognized a distinct responsibility to maintain "the integrity of the legal system."²⁶ They sought to enhance the administration of justice and "leave the law a better instrument of justice than they found it."²⁷

Dean Kronman describes a similar ideal, that of the "lawyer-statesman." This nineteenth century ideal was not confined to lawyers prominent in public life. It also guided lawyers in private practice.²⁸ The help a lawyer-statesman offered to clients was not merely a means to an end, for it also included guidance about those ends.²⁹ The lawyer-statesman was "distinguished by the exceptional wisdom he display[ed] in this regard."³⁰ He was "a paragon of judgment, and others look[ed] to him for leadership on account of his extraordinary deliberative power."³¹ He had personality traits that allowed him to sympathize with a broad spectrum of conflicting viewpoints.³² These were "qualities as much of feeling as of thought."³³

According to these critics, this "wise-counselor" or "lawyer-statesman" ideal has been reduced to a narrower notion of "zealous representation, rather than co-deliberation."³⁴ In its place, a profit-motivated entrepreneurial ideal has emerged.

IV. APPRAISAL

My own assessment of our moral condition is not as negative as that of our sterner critics. It is mixed. There is much to be discouraged about, but much to be proud of as well. My assessment is based on the experience of a career principally, but not exclusively, in bond law, the financing of state and local govern-

²⁵ See *id.*

²⁶ *Id.* at 17 (quoting from a speech given by Karl Llewellyn at the University of Chicago Law School in 1961).

²⁷ *Id.* at 99.

²⁸ See KRONMAN, *supra* note 4, at 109.

²⁹ See *id.* at 288 ("It is this enterprise of codeliberation that the lawyer-statesman ideal places at the center of the lawyer's professional life.").

³⁰ *Id.* at 15 (stating that the advice the lawyer gives the client about possibilities open to the client is what distinguishes attorneys from other professionals).

³¹ *Id.*

³² See *id.* (stating that the lawyer-statesman was able to help clients to understand better their own aspirations).

³³ *Id.* at 16 (noting that the lawyer-statesman ideal "was an ennobling thought, even for those who fell short").

³⁴ GLENDON, *supra* note 3, at 34 (discussing how corporate clients only request the assistance of a law firm when they are faced with a problem or transaction that requires special skill or knowledge).

ments and their agencies primarily through the issuance of bonds.³⁵

In my opinion, when operating in areas governed by specific rules where it is not difficult to determine objectively whether or not there has been compliance, most lawyers act properly. For instance, very few lawyers steal client funds.³⁶ Also, most lawyers with whom I have worked have been well-prepared. They have kept up with new developments by reading current publications or attending seminars. They have exercised due diligence in particular transactions.

A few, however, when rendering legal opinions, have treated legal requirements casually. Some lawyers, I believe, relied on their belief that lack of compliance with legal requirements would not be discovered or would not be raised in a legal proceeding. Others may have complied literally or facially with legal requirements, but failed to recognize that the substance of the transaction defeated the purposes of the legal requirements. Some, when reviewing or preparing a prospectus, have made no serious effort to see that investors were properly informed.

Some bond lawyers have teamed up with investment bankers to promote complex novel transactions to public agencies that were not yet clients. This, I believe, has led to situations where the professionals have put their own financial interests ahead of the potential client's best interest. Moreover, I have observed that some bond lawyers (as well as lawyers in other fields) tend to run up billable time needlessly or heedlessly when the legal fees are based on time spent.³⁷

³⁵ Bond practice involves the structuring of transactions and sometimes the creation of new public entities to finance projects and programs of state and local governments. Governments typically finance these undertakings by the issuance of bonds that are to be repaid from taxes or other revenues. Bond lawyers draft the necessary proceedings and documents and render opinions regarding whether the bonds are legally binding obligations, or whether the interest to be paid on them is tax-exempt. Often bond lawyers prepare or review the prospectus that discloses to investors the material facts bearing on the credit worthiness of the issuer.

³⁶ Thus, in the twelve months ended August 31, 1997, only "29 attorneys or .06% of the attorneys licensed to practice law in Massachusetts were responsible for the \$2,348,443 in defalcations found by the Board." Massachusetts Clients' Security Board, Report for Fiscal Year 1987, 1. One can assume that the same situation is also true elsewhere.

³⁷ See generally Sonia S. Chan, ABA Formal Opinion 93-379: *Double Billing, Padding and Other Forms of Overbilling*, 9 GEO. J. LEGAL ETHICS 611 (1996) (explaining the general problem of overbilling and the reasons why it is done); William G. Ross, *The Ethics of Hourly Billing by Attorneys*, 44 RUTGERS L. REV. 1

Despite all of this, there are many examples of lawyers possessing a high moral purpose. Experienced lawyers in all fields have been remarkably generous in their willingness to educate their competition. Lawyers in all fields have devoted huge amounts of time and attention to improving the law—making it work better—by proposing revisions of statutes and regulations, or by commenting constructively on proposals made by others.

There is a disquieting side to our efforts to influence legislation regarding our livelihood, however. We tend to use our professional organizations to oppose changes in the law that would reduce the need for our services, whether or not these changes would serve the public good.³⁸ We may honestly believe that the changes would not be in the public's best interest, and that our expert opinion should be heard, but we have an unavoidable bias. It would be better for us not to argue the public interest (other than as advocates for our clients) when our self-interest is likely to defeat our objectivity.³⁹

Lawyers in all fields have been generous in their support of legal services to the poor. Bar associations, as well, have been advocates of this assistance and have even organized entities to provide these services. Lawyers and law firms contribute money and personnel to these bar-sponsored entities and also provide direct services to needy clients *pro bono*.⁴⁰ But the record has been mixed. *Pro bono* is not part of the culture of some firms and proposals for mandatory *pro bono* work have been met with resistance.⁴¹

(1991) (discussing the ethical aspects of various types of time-based billing).

³⁸ See generally Quintin Johnstone, *Bar Associations: Policies and Performances*, 15 YALE L. & POL'Y REV. 193, 235-42 (1996) (recommending possible ways in which bar associations can increase their effectiveness).

³⁹ Consider, for example, the successful opposition of trial lawyers to the bill, vetoed by President Clinton, that would have limited punitive damages in product liability cases. See Neil A. Lewis, *President Vetoes Limits on Liability*, N.Y. TIMES, May 3, 1996, at A1 (noting that consumer groups and trial lawyers were the primary foes of the bill).

⁴⁰ See LINOWITZ, *supra* note 7, at 202-06 (noting the practices of certain large firms).

⁴¹ See Honorable Joseph W. Bellacosa, *Obligatory Pro Bono Publico Legal Services: Mandatory or Voluntary? Distinction Without a Difference?*, 19 HOFSTRA L. REV. 745, 754 (1991) (asserting that no matter how controversial a proposal for a lawyer to perform mandatory *pro bono* work appears to be, lawyers have an obligation to engage in *pro bono* ventures); Victor Marrero, *Committee to Improve the Availability of Legal Services, Final Report to the Chief Judge of the State of New York*, 19 HOFSTRA L. REV. 755, 756 (1991) (describing a committee report on the

Unquestionably, many lawyers have become preoccupied with the prospect of monetary gain, not only to finance a standard of living to which they aspire but as a measure of their professional success, a major factor in their self-esteem. To these ends, lawyers are working longer hours yet enjoying work less.⁴² For many lawyers, too much of their workday consists of activities they did not bargain for when they chose to become lawyers.⁴³ Many lawyers are "miserable."⁴⁴ In turn, family life suffers.

Interpersonal relations are not what they ought to be in many law firms. The lawyers do not pull together to assist one another, but compete to achieve greater compensation or rank. Major firms have sometimes broken up because of the inability of partners to "divide the pie" amicably.⁴⁵

Too often, non-lawyer staff are seen as mere instruments and not as persons having their own goals or as allies in a common enterprise. When Lawyer A asks Lawyer B how many "people" are in his or her firm, both lawyers usually understand that "people" means "lawyers" rather than all the members of the working team. Nevertheless, respect for non-lawyer coworkers has improved over the last generation.⁴⁶ This has happened, in part, through necessity—because non-lawyer coworkers can go elsewhere and know it—but also, in part, because of enhanced sensitivity and awareness.

Lawyers have also had a problem with respect for clients as

availability of legal services in which it was recommended that all members of the New York bar should perform a minimum of forty hours of pro bono service for the poor every two years).

⁴² See SHAFFER, *supra* note 18, at 153-54.

⁴³ For example, most did not aspire to become marketers.

⁴⁴ See GLENDON, *supra* note 3, at 84; Dahl, *supra* note 7, at 26; see also LITOWITZ, *supra* note 7, at 242.

⁴⁵ See Henry Hansmann, *When Does Worker Ownership Work? ESOPS, Law Firms, Codetermination, and Economic Democracy*, 99 YALE L.J. 1749, 1786 (1990) (suggesting formulas for determining how partners in law firms should be paid); Ronald J. Gilson & Robert H. Mnookin, *Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits*, 37 STAN. L. REV. 313, 320-22 (1985) (discussing various theories of profit sharing in law firms).

⁴⁶ See, e.g., Jane Harris Aiken, *Striving to Teach "Justice, Fairness, and Morality"*, 4 CLINICAL L. REV. 1, 5 (1997) (suggesting lawyers should treat others, including support personnel, with respect) (quoting AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP) (1992)).

persons. In the past, many lawyers regarded clients as a necessary evil, as mere means towards the goal of earning a living or displaying their craftsmanship. In this respect, increased competition for legal work and increased mobility of clients have had a salutary effect. Clients can demand respect as well as service and, if they have not received both, can go elsewhere.

In short, most of us have tended to comply with rules but we have not done as well as we should have to seek a higher and wider level of excellence in our professional lives. Let us now look briefly at recent efforts of the organized bar to raise and broaden our sights beyond rules.

V. THE ABA AND "PROFESSIONALISM"

In 1984, the American Bar Association ("ABA") made an expansive move by establishing the Commission on Professionalism. In its 1986 report, the commission urged all segments of the Bar to:

1. Preserve and develop within the profession integrity, competence,
fairness, independence, courage and a devotion to the public interest.
2. Resolve to abide by higher standards of conduct than the minimum required by the [1969] Code of Professional Responsibility and the [1983] Model Rules of Professional Conduct.
3. Increase the participation of lawyers in *pro bono* activities and help lawyers recognize their obligation to participate.
4. Resist the temptation to make the acquisition of wealth a primary goal of law practice.
5. Encourage innovative methods which simplify and make less expensive the rendering of legal services.⁴⁷

In addition, the commission asked lawyers to "put aside self-interest" when supporting or opposing legislation, unless doing so on behalf of clients.⁴⁸

⁴⁷ ABA (1986), *supra* note 3, at 265.

⁴⁸ *Id.* at 264, 281. The Commission added:

Parochial and shortsighted efforts to garner additional income for lawyers generally, or groups of lawyers, through special interest legislation, can only decrease public esteem....[I]t is hard to justify how legislation aimed at simplifying the handling of uncontested matters - clearly in the public interest and aimed at holding down fees - should ever properly be opposed

The commission urged "creative teaching of ethics and professionalism" in law schools by the Socratic method,⁴⁹ and in the continuing education of those already in practice.⁵⁰ It proposed that "discussion not be limited to the lowest level of conduct in which a lawyer may engage without being professionally disciplined," for "the true professional will usually demand more of himself or herself."⁵¹

The commission called on bar associations to develop "alternative dispute resolution mechanisms" so as to avoid the "cost, delay and uncertainty associated with civil litigation."⁵² In doing so, it reiterated remarks made by former Chief Justice Burger: "The true function of our profession should be to gain an acceptable result in the shortest possible time with the least amount of stress and at the lowest possible cost to the client. To accomplish that is the true role of the advocate."⁵³

In response to the commission's report, a number of law schools have incorporated the recommendations into their legal ethics curriculum.⁵⁴ Numerous state and local bar associations have followed the ABA's initiative and published professionalism "codes" and "reports."⁵⁵ These efforts by the organized bar, at-

by groups of lawyers.

Id. at 282.

⁴⁹ *Id.* at 266-68.

⁵⁰ *See id.* at 274-75.

⁵¹ *Id.* at 267. Professor Shaffer of Notre Dame derides the idea of "professionalism" and the ABA's effort to promote it. Shaffer views professionalism as inescapably elitist and impersonal, *see* SHAFFER, *supra* note 18, at 66-71, and even idolatrous in its "claim that only those who are admitted to the profession's mysteries can judge those who practice them." *Id.* at 71. However, these objections can be viewed as overblown, and I maintain that a professionalism conscientiously grounded in virtue ethics could overcome the wrong kind of elitism. People of all backgrounds and social classes can cultivate virtues, not just "the affluent and those of high status," as in Aristotle's view. MACINTYRE, *supra* note 18, at 159. Virtue ethics is elitist, but it is an elitism based on excellence, not privilege. On the other hand, I share Professor Shaffer's view that non-lawyers ought to be invited to participate in making and enforcing rules that govern lawyers. *Cf.* LINOWITZ, *supra* note 7, at 140 (recognizing that self-regulation has been "one of the hallmarks of professional status"); *see also* ABA (1986), *supra* note 3, at 261. For an especially strong statement of this view, *see* JETHRO K. LIEBERMAN, CRISIS AT THE BAR 218-20 (1978).

⁵² ABA (1986), *supra* note 3, at 288.

⁵³ *Id.* at 290.

⁵⁴ *See* Justin A. Stanley, *Professionalism and Commercialism*, 50 MONT. L. REV. 1, 11 (1989) (citing, as examples, Cornell University and University of Pennsylvania).

⁵⁵ These are on file at the offices of the ABA Center for Professional Responsibil-

tempting to elevate the standards of the legal profession beyond that which is minimally acceptable, offer encouragement as to the future moral health of the bar. But in spite of these efforts, the scope of these codes and reports has been mixed, often falling short of the moral demands made in the ABA report. For example, a 1992 report of the Boston Bar Association saw our moral malaise as largely a matter of incivility.⁶⁶ However, their 1997 report attacked the issue of professional fulfillment across the board and suggested specific steps to be taken by lawyers, law firms, corporate and governmental law departments, and law schools to rectify the situation.⁶⁷ The 1997 report did not, however, address the underlying issue of personal character and character development. A report of the Massachusetts Bar Association likewise touched many bases but failed to give any real emphasis to our preoccupation with profit or our tendency to resist, rather than promote, measures that would simplify legal requirements and reduce legal costs.⁶⁸

Lawyers need to give more attention to their goals and to the virtues required to make the appropriate moral choices to pursue them. The ABA's professionalism project offers constructive exhortations but provides no basis in anthropology, psychology, or spirituality that might lead a lawyer to be moved by them. I propose a grounding in goal-oriented virtue ethics, a system of moral thought having a long pedigree beginning with Aristotle's remarkable insights. I will, accordingly, now turn to the issue of goals and the virtues that would enable us to pursue them.

VI. VIRTUE ETHICS: GOALS AND VIRTUES

Human beings have goals, or ends.⁶⁹ The Greek word for a goal or end is *telos*.⁶⁰ So an ethic that is oriented to goals or ends is "teleological." Virtue ethics is teleological.⁶¹

ity, 541 North Fairbanks Court, 14th floor, Chicago, Illinois 60611-3314.

⁶⁶ See BBA, *supra* note 3, at 4.

⁶⁷ See Boston Bar Association, Report of the Task Force on Professional Fulfillment (1997).

⁶⁸ MASSACHUSETTS BAR ASSOCIATION, STATEMENT ON LAWYER PROFESSIONALISM (1989).

⁶⁹ See AQUINAS, *supra* note 22, at pt. I-II, art. 1-1.

⁶⁰ See ARISTOTLE, NICOMACHEAN ETHICS 315 (Martin Ostwald trans., 1962) [hereinafter ARISTOTLE, cited by book and chapter number].

⁶¹ Joseph J. Kotva, Jr., *An Appeal for a Christian Virtue Ethic*, 67 THOUGHT 158, 161 (1992).

Most goals are intermediate. That is, in addition to being goals in and of themselves, they are means to other goals. For example, getting to the office on time is a goal, but it is also a means toward the goals of earning a living, serving the client, and advancing the aims of the legal system. These, in turn, are means to other goals. When you follow the chain of goals all the way, you come to a person's ultimate or final *telos*.⁶² For Aristotle, the final goal was *eudaimonia*, which is usually translated to mean "happiness."⁶³ Aristotle regarded this as "the same as 'living well' and 'doing well.'"⁶⁴ It was "some sort of pleasure," since "the happy life [was] a pleasant life."⁶⁵ But it was not synonymous with pleasure since many pleasures, such as those of the body, are not ends in themselves but are merely means to happiness and can be pursued to an excess.⁶⁶

Eudaimonia may also be understood as "the state of being well and doing well in being well,"⁶⁷ or as "becoming excellent human beings."⁶⁸ Thomas Aquinas, the great medieval systematist of Christian theology, described a two-part moral-ethical system. One part was theological and specifically Christian. Its final *telos* was the happiness that is realized in being united with God.⁶⁹ Christian faith was an essential ingredient to achieving this goal.⁷⁰

The other part, derived largely from Aristotle, was "natural," secular and essentially philosophical.⁷¹ This system was more-or-less sufficient for the affairs of this world.⁷² It was imperfect; however, because for Aquinas, salvation could be achieved only

⁶² See AQUINAS, *supra* note 22, at pt. I-II, 1, arts. 4-5.

⁶³ See ARISTOTLE, *supra* note 60, at bk. 1, ch. 7; see also MACINTYRE, *supra* note 18, at 148.

⁶⁴ ARISTOTLE, *supra* note 60, at bk. 1, ch. 4.

⁶⁵ *Id.* at bk. 7, ch. 13.

⁶⁶ See *id.* at bk. 7, ch. 12-14; cf. AQUINAS, *supra* note 22, at pt. I-II, 2, art. 6 (explaining Aquinas' view on whether man's happiness exists in pleasure).

⁶⁷ MACINTYRE, *supra* note 18, at 148; see also GILBERT C. MEILAENDER, *THE THEORY AND PRACTICE OF VIRTUE* 11 (1984) (stating that virtues are needed in order "to live a life characteristic of flourishing human beings").

⁶⁸ Kotva, *supra* note 61, at 161.

⁶⁹ See AQUINAS, *supra* note 22, at pt. I-II, 3, art. 2.

⁷⁰ See *id.* at pt. I-II, 19, art. 5.

⁷¹ The secular system did call for the worship of God. See AQUINAS, *supra* note 22, at pt. II-II, 81, art. 2. But this worship was not specifically Christian since, in Aquinas' opinion, it was a "dictate of natural reason." *Id.* Aquinas held that the existence of God could be demonstrated by reason alone. See *id.* at pt. I, 2, art. 2-3.

⁷² See *id.* at pt. I-II, 63, art. 2.

within the theological system. This meant that only through the God-given "theological" virtues of faith, hope, and charity could one achieve salvation.⁷³

My purpose here is to find a way to advance legal ethics in this pluralistic, yet somewhat religious, society so that our legal careers can be more fulfilling. For now, I will limit my discussion to the natural and philosophical considerations and postpone the theological and supernatural considerations until the end.

Virtues are the excellencies that lead us toward the ultimate *telos*. Vices impede this journey. Virtues are skills.⁷⁴ Virtues are also traits of character.⁷⁵ They are habits or dispositions.⁷⁶ Virtues not only allow us to act in particular ways, "but also to feel in particular ways."⁷⁷ Virtues not only empower us to do the right thing, they are essential to the determination of what is right.⁷⁸ Virtues and vices do not lead inexorably to rightful or wrongful action because in varying degrees, we are free to act contrary to our settled dispositions.⁷⁹ But virtues make rightful actions far more likely, as vices make wrongful actions more likely. "To act virtuously ... is to act from inclination formed by the cultivation of the virtues."⁸⁰ We cultivate the virtues by practice, especially in imitation of others who are virtuous, as

⁷³ See *id.* at pt. I-II, 5, art. 5; pt. I-II, 51, art. 4; pt. I-II, 58, art. 3; pt. I-II, 61, art. 1; pt. I-II, 63, art. 1; pt. I-II, 109, art. 4-5; pt. II-II, 24, art. 2-3.

⁷⁴ See MEILAENDER, *supra* note 67, at 7, 9-10 (discussing the possibility that virtue is equal to skill). In addition, the author considers whether one's disposition to act a certain way or to have a particular character trait is equivalent to one's virtue. See *id.* at 7-11.

⁷⁵ See FRANKENA, *supra* note 18, at 63 ("Virtues are dispositions or traits that are not wholly innate; they must all be acquired, at least in part, by teaching and practice, or perhaps, by grace."); cf. KRONMAN, *supra* note 4, at 76 (discussing what factors are considered in determining what qualifies as traits of character); MEILAENDER, *supra* note 67, at 9-10.

⁷⁶ See FRANKENA, *supra* note 18, at 62-63; MEILAENDER, *supra* note 67, at 7-8.

⁷⁷ MACINTYRE, *supra* note 18, at 149; cf. FRANKENA, *supra* note 18, at 63 (stating that virtues involve more than just tendencies to feel a certain way but include tendencies to act a certain way, as well).

⁷⁸ See Kotva, *supra* note 61, at 167.

⁷⁹ See MACINTYRE, *supra* note 18, at 168 ("Character ..., the arena of the virtues and vices, simply becomes one more circumstance, external to will."); see also JAMES M. GUSTAFSON, CAN ETHICS BE CHRISTIAN? 41-42 (1975) (discussing how virtues arise out of habits); LEE H. YEARLEY, MENCIOUS AND AQUINAS 107 (1990) (noting that "[d]istinctively human dispositions rely on natural and acquired capabilities, but they also involve choice").

⁸⁰ MACINTYRE, *supra* note 18, at 149.

well as by education and training.⁸¹

VII. VIRTUE ETHICS: CARDINAL VIRTUES

To understand the virtues better, we divide them into key or "cardinal" (literally "hinge") virtues. Although Aquinas based his secular system on Aristotle, he borrowed his cardinal virtues from Plato.⁸² The cardinal virtues were prudence (or "practical reason"), justice (directed to others), and temperance and fortitude (directed to ourselves).⁸³ These virtues became the "classical" virtues of Catholic moral teaching, yet they remained secular and philosophical in nature. Also, these virtues were "natural" since humans could acquire them naturally, unlike the "theological" virtues of faith, hope, and charity, which were infused into the faithful by God's grace. Aquinas saw all other natural virtues, such as generosity and patience, as subsumed within one or more of the cardinal virtues.⁸⁴

A major problem with Aquinas' list is that he saw the virtues as essentially one. They were present, or absent, together.⁸⁵ You could not be brave, just, and temperate unless you were prudent, and vice versa.⁸⁶ You could not truly be brave without being just.⁸⁷ Aquinas did not see any conflicts among the virtues, but there are conflicts: conflicts among what we owe to others, what we owe to those with whom we have a special bond, and

⁸¹ See AQUINAS, *supra* note 22, at pt. I-II, 51, art. 3; ARISTOTLE, *supra* note 60, bk. 2, ch. 1 ("Thus, the virtues are implanted in us neither by nature nor contrary to nature: we are by nature equipped with the ability to receive them, and habit brings this ability to completion and fulfillment."); FRANKENA, *supra* note 18, at 63 (explaining virtues must be acquired through practice and teachings); Kotva, *supra* note 61, at 160 n.1, 163, 172 (discussing how some learn virtue through imitation).

⁸² See generally JOSEF PIEPER, *THE FOUR CARDINAL VIRTUES* (Richard Winston et al. trans., Univ. of Notre Dame Press ed. 1966).

⁸³ See AQUINAS, *supra* note 22, at pt. I-II, 61, art. 2-3 (discussing the principal virtues).

⁸⁴ See *id.* at pt. I-II, 61, art. 2 (concluding that all other virtues are reducible to the four principal virtues).

⁸⁵ See MACINTYRE, *supra* note 18, at 155, 157.

⁸⁶ See MEILAENDER, *supra* note 67, at 25-26 (explaining the relationship between prudence and the other three virtues); PIEPER, *supra* note 82, at 3, 32, 123 (stating prudence's preeminence over the other virtues). "No moral virtue is possible without prudence." *Id.* at 32 (quoting THOMAS AQUINAS, *QUAESTIONES DISPUTATAE DE VERITATAE*, 14, 6).

⁸⁷ See PIEPER, *supra* note 82, at 125 (referring to "just cause"). For Aristotle also, "the virtues [could not] exist independently of one another [A]s soon as [a man] possesses this single virtue of practical wisdom [i.e. prudence], he will also possess all the rest." ARISTOTLE, *supra* note 60, bk. 6, ch. 13.

what we owe to ourselves.⁸⁸

Our notions of justice do not fit well within our special bond relationships (such as marriage or friendship), or our relations with ourselves, for justice is even-handed. Justice cannot perfectly accommodate all we owe our families, friends, and ourselves insofar as it differs from what we owe to others.⁸⁹

To focus on the potential of the virtues in the life of a lawyer today, we do better when we use contemporary classifications. I will use classifications proposed by Father James Keenan of the Western Jesuit School of Theology in Cambridge, Massachusetts. In his ground-breaking article, *Proposing Cardinal Virtues*, Father Keenan lists prudence, justice, fidelity and self-care.⁹⁰

In Father Keenan's scheme, a settled disposition of justice draws one to fairness; namely, to whatever may be generally due to others.⁹¹ Fidelity draws us to meet our obligations to those with whom we have special bonds, such as friends, family and colleagues. A disposition to self-care draws us to meet our obligations to ourselves.

Prudence "discerns and sets the standards of moral action."⁹² It involves a three-step operation: deliberation, judgment, and decision.⁹³ The decision governs the emotions, including the often conflicting emotional pulls of justice, fidelity, and self-care. It governs them not dictatorially, but "politically," in other words, with their assent.⁹⁴ If the other virtues are well-developed, the emotions have a disposition to assent to the direction that prudence gives.⁹⁵

⁸⁸ See Keenan, *supra* note 16, at 721-22.

⁸⁹ Aristotle recognized that "[w]hat is just is not the same for parents with regard to their children and for brothers with regard to one another, nor is it the same for bosom companions as for fellow citizens." ARISTOTLE, *supra* note 60, bk. 8, ch. 9. However, he did not recognize conflicts among these obligations. What was due to each was different, but it was simply a matter of degree. See *id.* at bk. 9, ch. 2. "[T]he element of justice increases with (the closeness of) the [relationship]." *Id.* at bk. 8, ch. 9. He recognized no obligation of justice to ourselves at all, but only an obligation to the state not to take our own lives. See *id.* at bk. 5, ch. 11.

⁹⁰ See Keenan, *supra* note 16, at 723-28.

⁹¹ See *id.* at 724 (analyzing the virtue of justice). Cf. AQUINAS, *supra* note 22, at pt. II-II, 58, art. 1 (discussing the definition of justice).

⁹² Keenan, *supra* note 16, at 718.

⁹³ See PIEPER, *supra* note 82, at 12, 162.

⁹⁴ See AQUINAS, *supra* note 22, at pt. I-II, 56, art. 4.

⁹⁵ Cf. *id.* at pt. I-II, 56, art. 4. Kronman calls this concept "self-rule." KRONMAN, *supra* note 4, at 37-47. Jane Austen calls it "self-command":

[Emma] 'You are comfortable because you are under command.'

The four virtues fit remarkably well with the needs of the legal profession.

A. *Justice*

If a lawyer dwells on justice and develops the virtue of justice, she will seek to make the legal system work more effectively and in a less costly manner. She will be drawn to support law reform, rather than resist it. She will offer her services pro bono to individuals or organizations that cannot afford market rates. She will pass along her expertise to others through teaching at professional seminars. As a litigator, she will represent her clients faithfully, but she will not distort or abuse the adversarial system by using delaying tactics, obfuscation, or causing her adversary to spend unnecessarily.

B. *Fidelity*

If a lawyer dwells on the virtue of fidelity and practices it, she will bear in mind, in all her decisions, the needs of friends, family, and colleagues. She will reconcile their needs for support, affection, and respect with the obligation of service to the client.

C. *Self-Care*

If a lawyer dwells on the virtue of self-care, and trains herself in it, she will not let her own longing for full flourishing wither. She will not allow herself to become preoccupied with profit at the expense of service or at the expense of broader personal development, nor will she become chronically saddened by what Dean Kronman calls "lost loves and abandoned dreams."⁹⁶

D. *Conflicts of the Cardinal Virtues*

Contrary to Aquinas' scheme, these proposed virtues are not unified. They are in conflict. The obligations of fidelity to family

[Frank] 'Your command?—Yes.'

[Emma] 'Perhaps I intended you to say so, but I meant self-command. You had, somehow or other, broken bounds yesterday, and run away from your own management; but today you are got back again—and as I cannot be always with you, it is best to believe your temper under your own command rather than mine.'

JANE AUSTEN, *EMMA* 324 (E.P. Dutton 1934) (1816).

⁹⁶ KRONMAN, *supra* note 4, at 86.

and friends constantly conflict with the essential obligation of a lawyer to advance justice. Self-care, including the pursuit of the dream of serving the public interest rather than Mammon, can often conflict with the demands of fidelity to provide for one's family. Furthermore, a virtue can conflict with itself. For example, the needs of clients, colleagues, and family—all served by fidelity—can easily conflict with one another.

These conflicts can be especially difficult to resolve because conflicting needs are usually "incommensurable." For example, the decision of whether to go home and have dinner with one's spouse and children, versus staying at the office to meet a pressing deadline, cannot simply be made by putting points on each need and choosing between them on the basis of the points assigned. You cannot calculate your choice by any known branch of mathematics or deduce it from self-evident first principles by any known branch of logic. What you must do is exercise judgment. Judgment is central in the high art of prudence, to which I now turn.

E. Prudence

We know that prudence deliberates, decides, and directs moral action. It is not difficult to understand, then, how prudence might operate when pursuing a goal that is not in conflict with other goals. This is simply a question of means.⁹⁷ The more difficult task is to choose between goals whose "goods" are incommensurable, where calculation or deduction will not suffice and "any decision that is made must appear groundless."⁹⁸ As Alasdair MacIntyre puts it, "conflict between rival values cannot be rationally settled. Instead one must simply choose."⁹⁹ Father Keenan's cardinal virtues highlight these conflicts since, as we have seen, self-care, fidelity, and the pursuit of justice for others are often at war with one another.

Dean Kronman offers insight as to how prudence can function in the choice among incommensurable goods. Prudence is

⁹⁷ See *id.* at 55 (emphasizing that this "calls for a judgment of a calculative kind. Clearly, then, the skill most needed ... will be the ability to count costs with accuracy and speed.").

⁹⁸ *Id.* at 59, 65.

⁹⁹ MACINTYRE, *supra* note 18, at 26. Because of the incommensurability of values, or "goods," the utilitarian criterion of choosing "the greatest happiness of the greatest number" fails. It cannot be determined. It is "a pseudo-concept." *Id.* at 64. It is "irrational." JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 112 (1980).

both sympathetic and detached. In personal choice, prudence provisionally adopts each of the alternative choices and sympathetically examines how it would feel to be the kind of person one may become by making that choice. But at the same time, prudence remains detached by withholding final assent to any one choice while it compares the kinds of persons which the choices would lead one to become. With the benefit of that illumination, prudence then makes the choice.¹⁰⁰

Prudence acts wisely if it can look back with sympathy and detachment at paths taken or not taken with an "integrity ... that comes from being a friend to oneself,"¹⁰¹ rather than with "regret or self-deception."¹⁰² In this integrity, "one's present attachments are not at war with past ones."¹⁰³ In this wholeness, Kronman locates the elusive criterion of wise choice that neither calculation nor deduction can offer.¹⁰⁴ Prudence itself provides the criterion.¹⁰⁵

Hence these virtues—justice, fidelity, self-care and prudence—are what a lawyer needs to make moral choices.

Thus far we have been looking at the lawyer as an individual. Let us now consider the lawyer as a member of a firm.

VIII. THE FIRM

Lawyers belong to many communities; their families (both nuclear and extended), their countries, states, towns, and their social and religious groups. The working team to which a lawyer belongs is another community, whether it is a law firm, a legal aid office, or a corporate or governmental law department. I will call it "the firm," whatever its precise status.

¹⁰⁰ See KRONMAN, *supra* note 4, at 66-74.

¹⁰¹ *Id.* at 84.

¹⁰² *Id.* at 85 (discussing the spectre of regret).

¹⁰³ *Id.* at 95 (noting that political fraternity is similar to this personal wholeness).

¹⁰⁴ See *id.* at 87, 97. In political decisions, which includes lawmaking, Kronman finds a criterion of political fraternity that is comparable to integrity or wholeness of a person in personal decision-making. Where the political community must choose between conflicting incommensurable "goods," the resolution that best promotes "political fraternity" is the wisest choice. *Id.* at 97. Thus, in the larger world, as well as in personal affairs, this criterion or standard emerges from the operation of prudence itself.

¹⁰⁵ See DANIEL MARK NELSON, *THE PRIORITY OF PRUDENCE* 34 (1992) (discussing the prudential judgments made by a virtuous lawyer); PIEPER, *supra* note 82, at 27 (stating that prudence is the criterion for making ethical decisions).

The firm is not merely messengers, secretaries, lawyers, and administrators pursuing their individual goals separately. It is a team doing together what cannot be done alone. There is an entity, in addition to the people in it, that is greater than, and different from, the sum of its parts.

This creates new relationships among the members of the team, and between the members and the firm. Obligations of fidelity bind team members to one another and to the firm. Obligations of justice bind the firm to the public, and obligations of fidelity bind the firm to its clients. All members of the team participate in, and share, the obligations of the firm to its clients and to the public.

Lawyers who dwell on the virtue of fidelity to co-workers, and seek to develop that virtue within themselves, will no longer see their non-lawyer co-workers as mere instruments to be used. Rather, they will view them as persons to be respected, who have their own personal goals along with the shared goal of excellence of service by the firm. Lawyers who train themselves, by thought and action, in their fidelity to the firm and in their sense of shared obligation to its clients and the public, will enhance the performance of the firm and, by their greater loyalty, enhance its stability as well.

We will turn now to the lawyer as a member of a profession.

IX. THE PROFESSION

Beyond the firm, the profession is another community that, like an individual, has a moral life and a character made up of virtues and vices that lead to actions for good or ill. In a sense, its character and its actions are merely the sum or composite of the character and actions of the members. However, it also interacts with its members and with the public in ways that are best understood if it is viewed separately from its members.

Members of a common profession are related to one another and to the profession. Among the virtues of the members, therefore, will be care for the well-being of the profession and care for the quality of its service to the public. Additionally, the virtues of spirit of comradeship, mutual encouragement and support foster one's own excellence, as well as the excellence of colleagues, in service to the public.

Because it is a common calling, each member of the profession bears a common responsibility for how well the profession

serves the public. It is not enough to say, "I did not generate a transaction unnecessarily for my own benefit rather than the client's even though others appear to have done so," or "I did not abuse the discovery process in order to wear down the opposition, although others have done so." Lawyers share a common responsibility to strive, through bar activities or other appropriate means, to enhance the quality of service of the entire bar, and to support processes and standards that will avoid abuses of the law.

Let us pass now to the integration of the lawyer's many roles, both personal and professional.

X. INTEGRITY

As we have seen, Dean Kronman finds integrity, in the sense of personal wholeness, when he observes that prudence involves being able to look back at past decisions without disintegrating conflict and regret.¹⁰⁶

Integrity in the sense of wholeness also pertains to a moral life in other ways. A person of good character has virtues that lead him to act with substantial consistency in ways that express those virtues. Such a person has "moral integrity" or "wholeness."¹⁰⁷ This wholeness or consistency operates not only from one occasion to another, but also from one area of life to another. One cannot be one kind of person in family life and another kind of person in business or professional life. One cannot be one kind of person in church or temple or mosque and another kind of person at the office. If one is not a truth-teller when dealing with clients or opposing counsel, it will be all the more difficult to be a truth-teller when dealing with others. If a lawyer pursues shallow goals of greed or rank at the office, some of that may have its effects at home and impress the lawyer's children with faulty values. If a lawyer profits through abuse of the law, she will not find harmony or wholeness of person by giving a generous share of that profit to her church, law school, or a legal services agency.¹⁰⁸

¹⁰⁶ See KRONMAN, *supra* note 4, at 87, 95.

¹⁰⁷ GUSTAFSON, *supra* note 79, at 26-27.

¹⁰⁸ Dean Coquillette says this forcefully:

It is a delusion ... to think that [lawyers] can separate their personal from their professional lives and their personal from their professional morality. The current jargon refers to this dichotomy as "role defined" ethics. It is

Integrity is not a fifth cardinal virtue, but it reflects the consistent presence of the four cardinal virtues in the human person.¹⁰⁹ The lawyer who seeks to develop and practice the virtues in one area of life, but not in all, will fail. Any project of moral regeneration through the pursuit of the virtues must be across the board. A virtue is not a virtue unless it contributes to a "whole human life in which the goods of [the parts] are integrated into an overall pattern of goals which provides an answer to the question: 'What is the best kind of life for a human being like me to lead?'"¹¹⁰

XI. LEGAL EDUCATION

Should the virtues be taught in law school? Some will say that it is too late; that virtues must be taught in the home, or in grade school. But our common experience tells us that this has not occurred with proper regularity or sufficiency. For many law students, if it does not occur in law school, it does not occur at all. I am still only a learner of the virtues. It is never too late.¹¹¹

"[P]roblems, puzzles, quandaries or ... 'ethical dilemmas' "¹¹² are the stuff of law school courses in legal ethics.¹¹³ These courses deal largely with the application of ethical rules to par-

true intellectual rubbish. ... You cannot be a bad person and a good lawyer, nor can you be a good person and a lawyer with sharp practices.

... [Integrity] means "wholeness" or "oneness." There is just one of each of us.

Coquillette, *supra* note 1, at 1272.

¹⁰⁹ But MacIntyre evidently regards wholeness, or integrity, as a distinct virtue: "[T]here is at least one virtue ... which cannot be specified at all except with reference to the wholeness of a human life—the virtue of integrity or constancy." MACINTYRE, *supra* note 18, at 203. MacIntyre stresses "the place of integrity and constancy in ... the kind of life which is a quest for the good." *Id.* at 219.

¹¹⁰ *Id.* at 275.

¹¹¹ Shaffer emphatically disagrees that "a twenty-two-year-old in a university law school is too old to learn morals." SHAFFER, *supra* note 18, at 84.

¹¹² *Id.* at 16.

¹¹³ The principal textbook (really a casebook) is ANDREW L. KAUFMAN, PROBLEMS IN PROFESSIONAL RESPONSIBILITY (3d ed. 1989). The book is largely devoted to presentation of ninety-eight "problems" for discussion. Conflicts of interest is the largest single category in the book; they are also the most common ethical problem, by far, in law firms.

Although the book is excellent for its purpose, its purpose should be understood as helping to resolve quandaries in applying the rules of ethics. It sets the problems in contexts of such conflict and difficulty as to stretch students' moral vision as well as their intellectual acuity. However, the book does not discuss the issues on which we are most deficient, such as the lack of focus on true goals, the conflicting needs of family and law practice, or the preoccupation with financial gain.

ticular cases. This is essential training, of course, just as the case method is essential when learning tort and contract principles. Resolution of these ethical dilemmas, however, is not the most difficult issue. Most lawyers will act responsibly when applying specific ethical rules to concrete situations. Where they fall down is in their preoccupation with profit; their distortion and abuse of the litigation process; their resistance to law reform; their time away from their spouse and children; and their denial of broader, fuller lives to themselves. These are not ethical dilemmas of the sort that yield to the casuistry of the case method of instruction.

Others have suggested that the virtues be taught through the use of moral exemplars.¹¹⁴ This should be approached with caution. For reasons that Professor Shaffer has identified in his scathing critique of the "gentleman's ethic" of the nineteenth century lawyers, the former "lawyer-statesman" or "wise-counselor" ideal may turn out, on further examination, to be more tarnished than we now realize.¹¹⁵

What is needed is found much deeper in human value-choices and motivations than case-studies of ethical dilemmas can reach. My view, accordingly, is that legal education should include exposure to the principal competing ethical systems, including explicit attention to virtue ethics and how these systems bear upon our becoming better lawyers and persons.¹¹⁶ As the law student examines these competing systems with the sympathy and detachment that Dean Kronman sees as essential in personal choice, the law student will become a better person. Unlike the teaching of history or mathematics, the study of ethics cannot be regarded as successful just because facts and theories and methods have passed into the mind of the student. The student who has not become a more ethical person by the study

¹¹⁴ See, e.g., MEILAENDER, *supra* note 67, at 70-72 (discussing the importance of learning the virtues by observing others).

¹¹⁵ According to Shaffer: "[The gentleman's ethic] gave us slavery, Manifest Destiny, the theft of half of Mexico, gunboat diplomacy, the subjugation of women, the exploitation of immigrant children, Pinkerton detectives, yellow-dog contracts, and the genocide of American Indians." SHAFFER, *supra* note 18, at 50. It was "patriarchal, ... sexist ... [and] oppressive." *Id.* at 51.

¹¹⁶ Dean Coquillette's new coursebook is a major step in this direction. See DANIEL R. COQUILLETTE, *LAWYERS AND FUNDAMENTAL MORAL RESPONSIBILITY* (1995). It leads the student to reflect how various ideas of ethics may help with problems of moral choice that she will face as a lawyer. But it does not explicitly bring forth contemporary thought in virtue ethics.

of ethics has failed.

We must not, however, place excessive reliance on legal education to overcome our professional crisis. As Dean Coquillette has warned us, "our identity crisis as a profession ... cannot be solved by required ethics courses or media consultants. It requires a major reexamination of what we, as lawyers, are doing with our lives every day."¹¹⁷

CONCLUSION AND CODA

Vigorous enforcement of court-adopted rules of legal ethics will not suffice to overcome the moral malaise of our profession. Only a relative handful of lawyers violate clear enforceable rules. Our malaise is wider and deeper than that. It expresses itself in preference for profit over justice; in workaholism at the expense of family life and personal growth; in bitter competition for money and rank at the expense of fraternity. What is needed is closer attention to our true goals and to the excellencies or virtues needed to pursue them.

Virtue ethics offers a system of ethical thought that is promising, though imperfect, for today's legal profession. Similarly, Aquinas found his system of "natural" virtues to be more-or-less sufficient, though equally imperfect, for the affairs of the medieval world. Virtue ethics can work equally well for people with or without religious affiliations. Both sides can engage in constructive dialogue as to what virtue ethics asks of us.

Our experience tells us that people without faith can be as virtuous as religious adherents, even more so.¹¹⁸ Nevertheless, I believe that people with religious attachments have a higher call, a call to something more than rough sufficiency, though we can never fulfill the demands of this higher call. For those of us, like me, who call ourselves Christians, the higher call is Jesus' call to discipleship. He summons us to follow Him, to imitate Him, to let God's "will be done."¹¹⁹ We are called to become the "sort of persons [we] ought ... to be."¹²⁰

In our professional lives, this means regarding our work "as an assignment from God with a sublime purpose."¹²¹ In both

¹¹⁷ Coquillette, *supra* note 1, at 1276.

¹¹⁸ See GUSTAFSON, *supra* note 79, at 80.

¹¹⁹ *Matthew* 6:10.

¹²⁰ *2 Peter* 3:11.

¹²¹ John XXIII, *Mater et Magistra* § 149 (1961), reprinted in JOSEPH GREMIL-

Jewish and Christian thought, "humans are cocreators ... in the work of the world." ¹²² Jewish tradition calls upon humanity to "imitate the ways of the Holy One" ¹²³ by continuing God's work and being "God's partner [by] picking up where God left off ... [o]n the seventh day." ¹²⁴ Similarly, for John Paul II, "the working person is a collaborator in creation and one who carries out God's plan." ¹²⁵

But our work cannot stand apart from the rest of our lives. We are called to give proper exercise to "all [our] earthly activities ... [by gathering them] into one vital synthesis with religious values." ¹²⁶

LION, *THE GOSPEL OF PEACE AND JUSTICE*, at 143 (1976).

¹²² *Book Review*, 67 INITIATIVES 4 (June 1995) (National Center for the Laity, Chicago, Ill.) (quoting Rabbi Bernard Raskas, HUNGRY MIND REVIEW (Spring 1995)); see also Vatican II, *Gaudium et Spes* §§ 34, 67, reprinted in GREMILLION, *supra* note 121, at 243 [hereinafter *Gaudium*]; *Laborem*, *supra* note 11, § 25; KRONMAN, *supra* note 4, at 370-71; SHAFFER, *supra* note 18, at 57-58.

¹²³ JEFFREY K. SALKIN, *BEING GOD'S PARTNER* 64, 95-96 (1994). Rabbi Salkin's book is a practical guide to reuniting spirituality and work. As to law practice, see *id.* at 98-102. Two of his chapter headings, "Shattering the Idols of the Workplace" (chapter 7) and "Restoring Balance to Our Work Lives" (chapter 8), tell us what he is after. It is a good primer for all working people who believe in God. Although it does not explicitly adopt a virtue ethics approach, its thrust is the development of the person as an imitator and coworker with God. For a discussion on the human person as co-creator and partner with God, see JOSEPH B. SOLOVEITCHIK, *HALAKHIC MAN* 101, 105, 107 (1983).

¹²⁴ SALKIN, *supra* note 123, at 96 (emphasis omitted).

¹²⁵ John Paul II, *Work and the Christian Conscience*, 36 THE POPE SPEAKS 135, 136 (1991); see also John Paul II, *Human Work*, 29 THE POPE SPEAKS 225, 225 (1984) (discussing how man's work is a continuation of God's work). For testimonials as to the intimate relation between spirituality and legal work in a wide variety of faiths, see *Faith and the Law Symposium*, 27 TEX. TECH L. REV. 911 (1996).

¹²⁶ *Gaudium*, *supra* note 122, § 43.

